IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 4 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

RAJNIBEN CHINUBHAI

Appearance:

1. WEALTH TAX REFERENCE No. 4 of 1986

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for the opinion of this Court in respect of the assessment year 1975-76 :-

(ii) "Whether, the Appellate Tribunal has not erred in law and on facts in directing the value of the unquoted shares of Private Limited companies to be adopted as per Rule 1D of the Wealth-tax Rules as interpreted by the Gujarat High Court in the case of Ashok K. Parikh (129 ITR 46) ?"

2. We have heard Mr. B.B. Naik for the revenue. Though served, none appears for the respondent-assessee.

3. Mr. Naik submits that the Tribunal had relied on the decision of this Court in CWT vs. Ashok K. Parikh (1981) 129 ITR 46 while rendering the decision from which this reference arises, but subsequently in Bharat Hari Singhania vs. CWT (1994) 207 ITR 1, the Apex Court has impliedly disapproved the view of this Court in Ashok K. Parikh (supra), by laying down the following principle:

"If in the case of the balance-sheet of the company the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by clause (1) (a) of Explanation II to rule 1D, is also shown as a liability, i.e. if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities - and this is also what clause (ii) (e) says. Clause (ii)(e) is in a sense complementary to clause (i)(a). The advance tax paid is not really an asset but the pro forma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the sub-clauses.

4. In view of the above decision of the Apex Court in Bharat Hari Singhania vs. CWT (supra) we hold that

the Income Tax Appellate Tribunal had erred in directing the value of the unquoted shares for Private Limited companies to be adopted as per Rule 1D of the Wealth-tax Rules as interpreted by this Court in CWT vs. Ashok K. Parikh 129 ITR 46. Accordingly, the question is answered in the negative i.e. in favour of the revenue and against the assessee.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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